

Table of Contents

CHAPTER 1. BACKGROUND AND OVERVIEW OF NEW YORK'S EQUITABLE DISTRIBUTION LAW

§ 1:1 Scope of chapter

I. PROPERTY DISTRIBUTION SYSTEMS

§ 1:2 Diverse approaches to property distribution

§ 1:3 —Community property

§ 1:4 —Title distribution

§ 1:5 —Constructive trust

§ 1:6 —Equitable distribution

II. GENESIS OF NEW YORK'S EQUITABLE DISTRIBUTION LAW

§ 1:7 Constitutional catalyst

§ 1:8 Legislative history

§ 1:9 Legislative intent

§ 1:10 Statutory background; Additional insights

III. OVERVIEW OF NEW YORK'S EQUITABLE DISTRIBUTION LAW

§ 1:11 Scope of reform legislation

§ 1:12 Bifurcation of statute

§ 1:13 Prior actions or proceedings

§ 1:14 Statutory terminology under equitable distribution

§ 1:15 Types of actions governed by Part B

§ 1:16 Agreements between the parties

§ 1:17 Compulsory financial disclosure

§ 1:18 Disposition of property

§ 1:19 Maintenance

§ 1:20 Child support

§ 1:21 Special relief

§ 1:22 Enforcement and modification

§ 1:23 Proceedings following foreign judgments

CHAPTER 2. CONSTITUTIONALITY AND RETROACTIVITY OF THE AMENDED STATUTE

§ 2:1 Scope of chapter

§ 2:2 Bifurcated structure of amended statute

§ 2:3 Constitutionality

- § 2:4 Matrimonial actions governed by statute
- § 2:5 Effective date of Part B
- § 2:6 —Retroactive application of Part B
- § 2:7 —Amendment of pre-equitable distribution pleadings
- § 2:8 —Discontinuance of pending actions
- § 2:9 —Abandoned actions
- § 2:10 —Counterclaims and counteractions

CHAPTER 3. PROPERTY DIVISION UNDER EQUITABLE DISTRIBUTION

- § 3:1 Scope of chapter

I. CLASSIFICATION OF MARITAL AND SEPARATE PROPERTY

- § 3:2 Classification generally
- § 3:3 Judicial construction of marital property; Types of assets covered
 - § 3:4 —Time of acquisition
 - § 3:5 —Property acquired prior to marriage
 - § 3:6 —Property acquired during marriage
 - § 3:7 —Presumption in favor of marital property
 - § 3:8 —Postcommencement acquisitions
 - § 3:9 —Qualifying matrimonial actions; Discontinued and dismissed actions
 - § 3:10 —“Source of funds” approach
- § 3:11 Special issues; Cooperative conversions
- § 3:12 Separate property by source
- § 3:13 Inheritance
 - § 3:14 —Gifts
 - § 3:15 —Compensation for personal injury
- § 3:16 Exchanges of separate property
- § 3:17 Appreciation of separate property
 - § 3:18 —Active-passive distinction
 - § 3:19 —Burden of proof
 - § 3:20 —Appreciation time frame
 - § 3:21 —Price doctrine in application
- § 3:22 *Hartog* and its progeny
- § 3:23 Transmutation
 - § 3:24 —Burden of proof
 - § 3:25 —Equitable division in transmutation cases
 - § 3:26 —Business and professional interests
- § 3:27 Marital funds used to reduce separate property debt

II. DISTRIBUTION OF MARITAL PROPERTY

- § 3:28 Distribution generally
- § 3:29 Equitable distribution not necessarily equal division
 - § 3:30 —Income and property of parties

TABLE OF CONTENTS

- § 3:31 —Duration of marriage and age and health of parties
- § 3:32 —Custodial need for marital residence
- § 3:33 —Loss of inheritance and pension rights
- § 3:34 —Interrelationship with maintenance
- § 3:35 —Contributions
- § 3:36 —Liquidity considerations
- § 3:37 —Future financial circumstances
- § 3:38 —Difficulty of evaluation
- § 3:39 —Tax consequences
- § 3:40 —Wasteful dissipation of marital property
- § 3:41 —Fraudulent transfers and encumbrances
- § 3:42 —Catch-all factor
- § 3:43 —Marital fault
- § 3:44 Barriers to remarriage
- § 3:45 —Consideration of debt
- § 3:46 Content of decision and appellate review
- § 3:47 Distributive award
- § 3:48 Manner of distribution
- § 3:49 Limitations on judicial power
- § 3:50 Effect of statement of proposed disposition on distribution
- § 3:51 Bankruptcy considerations

CHAPTER 4. VALUATION OF MARITAL PROPERTY

- § 4:1 Scope of chapter
- § 4:2 Valuation generally
- § 4:3 Burden of proof of value
- § 4:4 Valuation date selection
- § 4:5 Valuation methodologies
- § 4:6 Valuation of closely-held business interests; Revenue Ruling 59-60
- § 4:7 Valuation methods: Excess earnings-return on net tangible assets

Appendix 4A. Revenue Ruling 59-60

Appendix 4B. Revenue Ruling 68-609

CHAPTER 5. PENSIONS, BUSINESSES, AND DEGREES

- § 5:1 Scope of chapter

I. PENSIONS AND DEFERRED COMPENSATION PLANS

- § 5:2 Valuation of property
- § 5:3 Valuation and apportionment of tuition benefits
- § 5:4 Importance of pensions and deferred compensation plans
- § 5:5 Nature of deferred compensation plans
- § 5:6 —Terminology

- § 5:7 The Majauskas benchmark
- § 5:8 Nonvested pension interests
- § 5:9 Determination and distribution of pension awards
- § 5:10 Methods of distribution
- § 5:11 Stock options
- § 5:12 Security of deferred pension awards
- § 5:13 Relationship between pension award and maintenance
- § 5:14 Valuation of pensions
- § 5:15 —Tax impacting
- § 5:16 —Optional retirement dates
- § 5:17 —Evidence and information
- § 5:18 Federal preemption
- § 5:19 Qualified domestic relations order
- § 5:20 Other employment-related benefits

II. CLOSELY-HELD BUSINESSES AND PROFESSIONAL PRACTICES

- § 5:21 Business and professional interests as marital property
- § 5:22 Inception and growth of business enterprise
- § 5:23 Professional practice subject to equitable distribution
- § 5:24 Valuation of business and professional interests
- § 5:25 Distribution of business and professional interests

III. EDUCATIONAL DEGREES AND PROFESSIONAL LICENSES

- § 5:26 Student spouse-working spouse
- § 5:27 Distributability
- § 5:28 O'Brien v. O'Brien and its progeny
- § 5:29 —Post-O'Brien status of degrees and certifications
- § 5:30 —Enhanced earning capacity
- § 5:31 —Time of conferment of license or degree
- § 5:32 —Distributive analysis
- § 5:33 —Security for award
- § 5:34 —Tax impacting

CHAPTER 6. MAINTENANCE, CHILD SUPPORT AND SPECIAL RELIEF

- § 6:1 Scope of chapter

I. SPOUSAL MAINTENANCE

- § 6:2 Definition and purpose
- § 6:3 2015 Statutory Temporary and Post-Divorce Maintenance
- § 6:4 —Definitional Change
- § 6:5 —Enhanced Earnings No Longer Marital Property
- § 6:6 —Opt-Out Right Preserved
- § 6:7 —Definitions

TABLE OF CONTENTS

§ 6:8	—Methodology
§ 6:9	—Over-The-Cap Payor Income
§ 6:10	—Self-Support Reserve
§ 6:11	—Duration of Temporary Maintenance Award
§ 6:12	—Deviations from Computational Method
§ 6:13	—Right to Opt-Out
§ 6:14	—Defaults and Non-Disclosure
§ 6:15	—Modification of Orders and Agreements
§ 6:16	—Allocation of Family Expenses
§ 6:17	—Without Prejudice to Post-Divorce Maintenance Award
§ 6:18	—Post-Divorce Maintenance
§ 6:19	—Right to Opt-Out Preserved
§ 6:20	—Definitions
§ 6:21	—Methodology
§ 6:22	—Over-the-Cap Payor Income
§ 6:23	—Deviation from Formulae
§ 6:24	—Duration of Post-Divorce Maintenance Award
§ 6:25	—Unrepresented Parties
§ 6:26	—Right to Opt-Out Preserved
§ 6:27	—Defaults and Non-Disclosure
§ 6:28	—Modification of Orders and Agreements
§ 6:29	—Barriers to Remarriage
§ 6:30	—Modification Based on Retirement
§ 6:31	—Amendment of DRL § 248
§ 6:32	—Effective Dates
§ 6:33	Alimony and its limitations
§ 6:34	The rehabilitative role of maintenance
§ 6:35	Effective date and retroactivity of award
§ 6:36	Duration of maintenance award
§ 6:37	Maintenance award where matrimonial relief denied
§ 6:38	Maintenance determinations; Statutory factors
§ 6:39	—Income and property
§ 6:40	—Duration of marriage and status of parties
§ 6:41	—Earning capacity of each party
§ 6:42	—Self-supporting capacity
§ 6:43	—Preparation for self-sufficiency
§ 6:44	—Presence of children
§ 6:45	—Marital standard of living
§ 6:46	—Tax consequences
§ 6:47	—Spousal contributions
§ 6:48	—Wasteful dissipation of family assets
§ 6:49	—Catch-all provision; Marital fault
§ 6:50	Content of decision and appellate review
§ 6:51	Form of maintenance award

II. SPECIAL RELIEF AND FORM OF ANCILLARY AWARDS

§ 6:52	Medical insurance
--------	-------------------

- § 6:53 Life insurance
- § 6:54 Form of awards

CHAPTER 7. CHILD SUPPORT

- § 7:1 Scope of chapter

I. STATUTORY STRUCTURE AND PROCEDURAL ASPECTS

- § 7:2 Statutory reference points
- § 7:3 Effective date and retroactivity of award
- § 7:4 Child support award where matrimonial relief denied
- § 7:5 Content of decision and appellate review
- § 7:6 Form of award

II. PARAMETERS OF LIABILITY

- § 7:7 Age of majority
- § 7:8 Emancipation of child
- § 7:9 Stepparent liability
- § 7:10 Other bases for termination—Death of payor; Adoption

III. THE CHILD SUPPORT STANDARDS ACT: ANTECEDENTS AND EVOLUTION

- § 7:11 Legislative history and purposes
- § 7:12 Applicability of CSSA; Pending actions
- § 7:13 Alternative approaches to child support
- § 7:14 —Cost-allocation approach
- § 7:15 —Amounts awarded under cost-allocation approach
- § 7:16 —Income-sharing models
- § 7:17 —The Wisconsin formula
- § 7:18 —The Delaware Melson formula
- § 7:19 —Income equalization theory

IV. ANALYSIS OF NEW YORK'S CSSA

- § 7:20 Alternative methodologies under the CSSA
- § 7:21 The formula method
- § 7:22 Applying the child support percentages
- § 7:23 The add-ons
- § 7:24 —Child care expenses
- § 7:25 —Health care expenses
- § 7:26 —Educational expenses
- § 7:27 Determining parental income
- § 7:28 —Mandatory income inclusions
- § 7:29 —Discretionary imputed income inclusions
- § 7:30 —Mandatory imputed income inclusions—Earning capacity
- § 7:31 — —Recapture of self-employment deductions
- § 7:32 —Mandatory deductions—Employee business expenses

TABLE OF CONTENTS

§ 7:33	—Maintenance and child support
§ 7:34	—Public assistance, SSI, municipal earnings taxes, and FICA
§ 7:35	Nonrecurring payments
§ 7:36	The formula amount as a rebuttable presumption
§ 7:37	Variance from the formula
§ 7:38	—Written order requirement
§ 7:39	The variance factors
§ 7:40	—Financial resources of parents and child
§ 7:41	—Health care, educational expenses and special needs of child
§ 7:42	—Pre-separation standard of living
§ 7:43	—Tax consequences
§ 7:44	—Nonmonetary contributions
§ 7:45	—Educational needs of parent
§ 7:46	—Disparity in parental income
§ 7:47	—Nonsubject children of support provider
§ 7:48	—Visitation expenses
§ 7:49	—Other relevant factors
§ 7:50	Opt-out agreements
§ 7:51	Unrepresented parties
§ 7:52	Financial disclosure
§ 7:53	Defaults
§ 7:54	Modification; Pre-CSSA orders
§ 7:55	Modification of post-CSSA orders
§ 7:56	Temporary orders
§ 7:57	Self-support reserve and lower income litigants
§ 7:58	Administrative matters

V. MISCELLANEOUS PRACTICE IMPLICATIONS

§ 7:59	Joint and split custody
§ 7:60	Custody negotiation and litigation
§ 7:61	Matrimonial negotiations
§ 7:62	Review and adjustment
§ 7:63	Uniform Interstate Family Support Act

CHAPTER 8. ENFORCEMENT OF AWARDS

§ 8:1	Scope of chapter
-------	------------------

I. ENFORCEMENT OF AWARDS UNDER PART B

§ 8:2	Incorporation of enforcement devices
-------	--------------------------------------

II. MONEY JUDGMENTS

§ 8:3	Reduction of arrearage to money judgment
§ 8:4	Modification of money judgment
§ 8:5	—Other enforcement devices
§ 8:6	Arrears accruing during pendency; Interest
§ 8:7	Denial of visitation as defense
§ 8:8	Statute of limitations and waiver

- § 8:9 Form of matrimonial judgment
- § 8:10 Jurisdiction and procedure
- § 8:11 —Order to show cause form
- § 8:12 —Affidavit in support of application pursuant to Domestic Relations Law Section 244 form
- § 8:13 —Order directing entry of money judgment form
- § 8:14 —Money judgment form

III. SECURITY AND SEQUESTRATION

- § 8:15 Nature and scope of relief
- § 8:16 Basis for relief
- § 8:17 Jurisdiction and procedure
- § 8:18 —Order to show cause form
- § 8:19 —Affidavit in support of application pursuant to Domestic Relations Law Section 243 form
- § 8:20 —Order directing sequestration and appointing receiver form

IV. INCOME DEDUCTION ORDER

- § 8:21 Nature and scope of remedy
- § 8:22 Income subject to deduction order
- § 8:23 Basis for relief
- § 8:24 Support collection unit
- § 8:25 Jurisdiction and procedure
- § 8:26 Duration of order
- § 8:27 Conversion of proceeds by employer

V. CONTEMPT

- § 8:28 Nature and availability of remedy
- § 8:29 Exhaustion of remedies
- § 8:30 Basis for remedy; Willful default
- § 8:31 Service of underlying order or judgment
- § 8:32 Jurisdiction and commencement procedure
- § 8:33 Hearing and determination
- § 8:34 Punishment
- § 8:35 —Notice of motion form
- § 8:36 —Order to show cause form
- § 8:37 —Affidavit in support of application to punish for contempt form
- § 8:38 —Order of contempt form

VI. MISCELLANEOUS ENFORCEMENT MATTERS

- § 8:39 Counsel fees and expenses
- § 8:40 Fraudulent conveyances
- § 8:41 Enforcement in family court
- § 8:42 Conveyance of property interest to satisfy arrears

TABLE OF CONTENTS

**VII. NEW YORK STATE SUPPORT ENFORCEMENT ACT
OF 1985**

- § 8:43 Statutory Scheme of Support Enforcement Act of 1985
- § 8:44 Income execution for support enforcement
- § 8:45 —Notice
- § 8:46 —Service
- § 8:47 —Mistake of fact
- § 8:48 —Vacatur
- § 8:49 —Duties of employer or income payor
- § 8:50 —Amount of deduction
- § 8:51 Income payable by state
- § 8:52 —Income execution for support enforcement form
- § 8:53 —Notice of motion: Application asserting mistake of fact
- § 8:54 —Affidavit in support of application asserting mistake of fact
- § 8:55 Income deduction order under Support Enforcement Act of
1985
- § 8:56 Related amendments to domestic relations law enforcement
provisions
- § 8:57 Implied waiver of child support prohibited